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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,372	02/21/2002	Christian Kraft	004770.00789	5016
22907 7590 07/10/2009 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051				
			EXAMINER	
			PAPPAS, PETER	
			ART UNIT	PAPER NUMBER
			2628	
			MAIL DATE	DELIVERY MODE
			07/10/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/078,372

Applicant(s)

KRAFT ET AL.

Examiner

PETER-ANTHONY PAPPAS

Art Unit

2628

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-6, 8-13 and 15-26.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Peter-Anthony Pappas/
Primary Examiner, Art Unit 2628

Continuation of 11, does NOT place the application in condition for allowance because:

In response to Applicant's remarks that TNT is not usable with a sequence of images the Examiner does not agree. TNT illustrates a GUI displaying an image in a Design panel for modification as well as displaying a plurality (e.g., sequence) of said images in a Sample Pattern panel (§ 11.2.4.2.4; "...Thin white lines in the panel delineate the boundaries of a single pattern within the repeating bitmap pattern..." - § 11.2.4.2.4.7). It is the position of the Examiner that said Sample Pattern panel clearly illustrates a sequence of said image displayed in said Design panel.

In response to Applicants remarks that TNT is deficient insofar as edits would not be applied from one image to another image in the sequence of images the Examiner does not agree. TNT teaches that modification performed within the Design panel can be applied to said plurality of images ("With the options on the Edit menu, you can ... replace one color with another everywhere it is used in a pattern..." - § 11.2.4.2.4.2; "Then click on a pixel in the Design panel, and the color of the pixel changes to the selected color. The color change is also made automatically in the Sample Pattern panel." - § 11.2.4.2.4.4; "Use the Background button if you want to change the background color in the Sample Pattern panel ... Set your background color and press OK; the color is automatically applied to the Sample Pattern panel." - 11.2.4.2.4.8).

In response to Applicant's remarks that the Office Action appears to imply that because the bitmap pattern in TNT is repeated within a single image that TNT somehow teaches or suggests the claim sequence of images and that the bitmap pattern in TNT is repeated only within the same image and not in a sequence of images the Examiner does not agree. It appears the Applicant is attempting to limit the definition of an image to read on only the graphic information displayed within said Sample Pattern panel. TNT fails to either explicitly or implicitly disclose support for such a definition. It is the position of the Examiner that an image is a visual representation of information and that an image can in fact comprise other images. Thus, it is the position of the Examiner that the graphic information displayed in said Design panel reads on an image and that said Sample Pattern panel illustrates a sequence (e.g., plurality) of said image displayed in said Design panel.

Applicant's remarks have been fully considered but they are not persuasive.